IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.310 OF 1985

with

FIRST APPEAL NO.780 OF 1985

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE ROAD TRANSPORT CORPORATION
VERSUS
LALITAPRASAD RAMNARAYAN UPADHYAYA

Appearance:
(In FA: 310/85)
MR NV ANJARIA for the Appellant
MR RR MARSHAL for Respondent No.1
MR AJAY R MEHTA for Respondents No.3 & 4
None present for Respondent No.2

(In FA: 780/85)
MR RR MARSHAL for the Appellant

MR NV ANJARIA for Respondent No.2
MR AJAY R MEHTA for Respondent No.3 & 4
None present for other Respondents

Coram: S.K. Keshote,J
Date of decision:19/11/1998

C.A.V. JUDGMENT

#. These two appeals, one by the Gujarat State Road Tranport Corporation, the owner of the offending vehicle and another by the claimant, has been filed against the award of the Motor Accident Claims Tribunal (Main) Surat, dated 30th April 1984 in Motor Accident Claims Petition No.157 of 1982. Under this award, the claimant-respondent No.1 in First Appeal No.310 of 1985 and claimant-appellant in First Appeal No.780 of 1985 was awarded Rs.50,800/= with 6% interest from the date of application till realization and proportionate costs against the appellant and respondent No.2 and 4 in First Appeal No.310 of 1985. It was further ordered by the Tribunal that the liabilities of the aforesaid persons is composite liability and the insurance company has to satisfy the award as if judgment-debtor and the claimant can recover the amount awarded from either of opponents. The learned Tribunal has further held that the contributory negligence of the drivers of the two vehicles is 50:50.

#. The facts of the case in brief are that the claimant on the fateful day, was sitting on `Otta' of shop of Chhabildas Kuberdas situated on south of road beyond the footpath for settling accounts and at that time, Matador tempo bearing No.GTT-4215 driven by the driver-Johnson Christie, in a rash and negligent manner, and S.T.bus was following tempo and dashed with tempo, which rushed towards the shop and right side portion of tempo dashed with the claimant and his left leg was crushed which was subsequently required to be imputed from below the knee. This accident occurred on 4.1.81. It is stated to be as a result of rash and negligent driving on the part of both the drivers of the offending vehicles aforesaid. In this accident, the claimant-respondent No.1 in the appeal of the Gujarat State Road Transport Corporation and the appellant in his own Appeal, sustained injuries as aforesaid on the left leg. He claimed Rs.1 lakh as compensation for these injuries and the Tribunal has

awarded Rs.50,800/=. The negligence on the part of two drivers of the vehicles was taken to be 50% each. The claimant has prayed for enhancement of compensation whereas the Corporation has prayed for setting aside the award against it as what it is contended that the driver of the tempo was wholly responsible and negligent for this accident.

#. First of all, I may deal with the appeal of the Corporation. The only contention has been made that the Tribunal has committed error in holding S.T. bus driver to be negligent in the accident to the extent of 50%.

#. The learned counsel for the claimant-respondent on the other hand contended that the Tribunal has passed a just and reasonable award to which no exception can be taken. Otherwise also, what the learned counsel for the claimant-respondent contended that it is a case of composite negligence and he is entitled to recover this amount from either of the owners of the vehicles or the insurance company.

#. I have considered the rival contentions made by learned counsel for the parties.

#. In this case, I find that the Corporation has not examined its driver in the claim application and felt contended by examining the Conductor of the bus Allarakha. From the statement of Allarakha, conductor, I find that he has tried to state that the driver of the tempo was wholly negligent in causing accident but he admits that he has gone to police station to file FIR with the driver of the bus but his statement was not recorded by police. From the statement of the conductor, there is another thing which is clearly borne out that right cabin portion of the bus and the left side body portion of the tempo had come in contact with each other. This would have been possible only if the bus would have been taken very close to tempo and would have been swerved towards right hand side. It has also come on the record that at the time of the accident, the bus was practically in the middle portion of the road. The back side wheel of the bus was at a distance of 9 ft. away from the south side foot-path. The bus therefore must be proceeding more towards right side of the road. It is admitted case of the Corporation that towards the left hand side of the road, there were hand-driven carts and vegetable vendors. The statement of witness Thakorebhai was recorded on behalf of opponent No.4 in the claim application and it has rightly been not believed by the Tribunal. He made a statement contrary to what the

opponent No.4 has pleaded in the written statement. The Tribunal after appreciation of evidence of the parties, has rightly held both the drivers to be negligent equally in their driving resulting in this accident. This finding of fact which is based on appreciation of evidence does not suffer from any infirmity which calls for interference of this Court. The learned counsel for the Corporation is unable to point out any misreading of evidence or where any material piece of evidence has not been considered or on the appreciation of evidence, conclusion which is drawn by the Tribunal could not have been drawn. The contention of the learned counsel for the Corporation is without any substance and this appeal deserves to be dismissed and accordingly it is dismissed.

#. Now, I may consider the appeal of the claimant. The age of the claimant on the date of accident was 50 years. His one leg was totally crushed and as a result thereof, it has to be imputed. He sustained fracture also. From the evidence of the claimant, I find that he was doing work of driving bullock carts and his source of income is of mainly two bullock carts. He has made a statement that his daily income was about Rs.50/= but the Tribunal has taken his daily income to be Rs.20/= and looking to the nature of job he was doing and the year of accident, his per day income taken by the Tribunal appears to be reasonable. But the Tribunal has altogether lost sight of the fact that the future income of the claimant was not taken into consideration for the purpose of assessing the amount of compensation to be awarded to him. His future income may be taken to be Rs.1200/= per month and average income for the purpose of assessing the compensation under the head of economic loss may be taken to be of Rs.600+Rs.1200=Rs.1800 and on dividing the same by two, it comes to Rs.900/= per month. The Tribunal has awarded six month's wages as compensation towards non working for six months. Under the Act, the claimant-appellant shall be entitled for Rs.900x6=5400 and the net balance amount under the head will be Rs.5400-Rs.3600=Rs.1800.

#. The left leg of the petitioner was imputed from the below knee. However, the functional permanent-partial disability has been taken to be 30% and on the basis of which the loss of Rs.300/= p.m. has been taken which comes to Rs.3,660/= p.a. and multiple of 12 applied also seems to be reasonable. The learned counsel for the appellant also has not challenged taking of permanent partial disability to be 30% and multiple of 12. So the future economic loss of the claimant assesses on this basis is of Rs.54,000/= against the the amount of

Rs.28,800/= is awarded by the Tribunal. Under this head, the net additional amount of compensation should be Rs.25,200/= for which the claimant is entitled.

#. Under the head of medical treatment and other expenses, the claimant has claimed Rs.5,000/= but the Tribunal has awarded only Rs.1,000/= under this head which is towards lower side. Looking to the injuries sustained by the claimant and the treatment he has undergone, this award of Rs.1,000/= is not reasonable. Under this head, I consider it to be reasonable that the claimant should be awarded Rs.4,000/=. So the claimant is entitled for additional amount of Rs.3,000/= under this head.

##. Awarding of Rs.12,000/= for pain and suffering in this case by the Tribunal is also towards lower side. Under this head also, reasonable addition....

deserves to be awarded and taking into consideration the fact that his one of the leg has been imputed, I consider Rs.20,000/= to be just, reasonable and adequate amount of compensation to be awarded to the claimant under this head. So under this head, the claimant will get additional compensation of Rs.8,000/=.

##. So the claimant will be entitled for additional compensation under different heads as detailed below:

Head	Amt.awarded by Tribunal	Amt.awarded by this Court	Difference (Addl.amt. of compensation)
Pain, suffering etc.	Rs.12,000/		
Future economic loss	Rs.28,800/=	Rs.54,000/=	Rs.25,200/=
Medical & other expenses	Rs.01,000/=	Rs.04,000/=	Rs.03,000/=
TOTAL:			Rs.36,200/=

##. In the result, the appeal of the claimant, i.e. First Appeal No.780 of 1981 stands partly allowed and the

award of the Motor Accident Claims Tribunal (Main) Surat, passed in Motor Accident Claims Petition No.157 of 1982 is modified accordingly and in addition to what the Tribunal has awarded as compensation to the claimant-appellant in this Appeal, an additional amount of Rs.36,200/= together with running interest thereon at the rate of 6% from the date of claim application till the date of realization is awarded. The respondents Nos.1, 2 and 4 shall be liable to pay this additional amount of compensation together with interest thereon jointly and severally. Liabilities of these respondents is composite liability and the Insurance Company has to satisfy the award as if judgment-debtor. The claimant-appellant can recover the amount awarded from either of the respondents. However, for the purpose of inter-se liability, the liability of the respondents No.1 and 2 is to the extent of 50% and the liability of respondent No.4 is to the extent of 50%. The parties are directed to bear their own costs of this litigation. In view of the fact that this accident pertain to the year 1981, and the award has been passed by this Court in the year 1998, i.e. after about 17 years of the accident, I do not consider it to be a fit case where any direction has to be given for depositing of this amount in a scheduled bank. No order as to costs.

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(sunil)